

ORDER NO. 1712

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Priority Mail
Priority Mail Contract 58

Docket No. MC2013-47

Competitive Product Prices
Priority Mail Contract 58 (MC2013-47)
Negotiated Service Agreement

Docket No. CP2013-61

ORDER ADDING PRIORITY MAIL CONTRACT 58 TO THE
COMPETITIVE PRODUCT LIST

(Issued May 9, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 58 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Priority Mail Contract 58 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, April 29, 2013 (Request).

II. BACKGROUND

On April 29, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 58 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of Governors’ Decision No. 11-6, the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On April 30, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Order No. 1707, Notice and Order Concerning the Addition of Priority Mail Contract 58 to the Competitive Product List, April 30, 2013.

III. COMMENTS

The Public Representative filed comments on May 6, 2013.⁵ No other interested person submitted comments.

Based upon review of the contract, Statement of Supporting Justification, and the financial data and model filed under seal, the Public Representative concludes that Priority Mail Contract 58 should be categorized as a competitive product and added to the competitive product list. *Id.* at 3. The Public Representative states that the contract appears to meet the requirements of 39 U.S.C. § 3633(a) during the first contract year based on the financial data filed by the Postal Service. *Id.* at 2. She expresses concern that the Postal Service provides no data that would allow her to conclude that the contract will comply with 39 U.S.C. § 3633(a) in subsequent contract years, but notes that the contract provides for periodic price adjustments. *Id.* She also notes that the Postal Service's financial worksheets predict increasing inflation over the contract term and urges the Commission to evaluate closely the periodic price adjustments for compliance with 39 U.S.C. § 3633(a). *Id.* The Public Representative acknowledges that the Postal Service reports data to the Commission on an annual basis and that such data is reviewed for compliance with applicable statutory requirements. *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Contract 58 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. In addition, the Commission must consider the availability and nature of private sector

⁵ Public Representative Comments on Postal Service Request to Add Priority Mail Contract 58 to Competitive Product List, May 6, 2013 (PR Comments).

enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. § 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Priority Mail Contract 58 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. Because Priority Mail Contract 58 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

As part of its Request, the Postal Service submitted a certified statement that the contract complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the contract is expected to cover its costs.

The Public Representative raises concerns about the lack of data for the second and third years of the contract. PR Comments at 2. As noted by the Public Representative, however, the contract includes an annual rate adjustment provision. *Id.*; see also Request, Attachment B at 2. This provision should allow the contract's

revenues to cover costs in subsequent years. Thus, the Commission finds that Priority Mail Contract 58 complies with the provisions applicable to rates for competitive products. As part of its Annual Compliance Determination proceedings, the Commission also will review the contract's financial performance for consistency with section 3633(a).

Other considerations. By its terms, the contract becomes effective 1 business day after the date that the Commission issues all necessary regulatory approvals. Request, Attachment B at 2. The contract is scheduled to expire 3 years after the effective date, unless, among other things, either party terminates the contract with 30 days' written notice to the other party. *Id.* at 3.

The contract also contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified within 7 days of the contract expiring. *Id.* During the extension periods, prices will increase by the average increase in prices of general applicability for Priority Mail Commercial Plus Pricing. *Id.* at 2-3.

The Commission finds the two potential 90-day extension periods are reasonable because (1) prices automatically increase in the extension period, making it likely that the contract will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility. However, the Commission has one concern with the provision as written, which allows the Postal Service to provide the Commission with notice of an extension "within seven (7) days of the contract expiring." *Id.* at 3. As the Commission has previously stated, motions for a temporary extension of a contract should be filed at least 1 week prior to the contract's expiration date.⁶ Thus, if the parties agree to utilize a 90-day extension period, the Postal Service should file a notice with the Commission in these dockets at

⁶ Docket No. CP2009-38, Order No. 1523, Order Granting Motion for Temporary Relief and Providing Guidance Regarding Future Motions for Temporary Relief, November 1, 2012, at 2.

least 1 week prior to the 3-year expiration date.⁷ If the parties then opt to utilize the second 90-day extension period, the Postal Service should file a notice with the Commission at least 1 week prior to the expiration of the first 90-day extension.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by rate category and zone associated with the contract.

In conclusion, the Commission approves Priority Mail Contract 58 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 58 (MC2013-47 and CP2013-61) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. If the instant contract is extended pursuant to the contract terms, the Postal Service shall notify the Commission at least 7 days prior to the contract's expiration.
3. The Postal Service shall notify the Commission if the instant contract terminates prior to the scheduled expiration date as discussed in this Order.

⁷ Such notices shall include the contract's revised expiration date.

4. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by rate category and zone associated with the contract.
5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-47 and CP2013-61. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Priority Mail Contract 58

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